

EXHIBIT C

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
State of Arizona v. Abbott) Judge Patti B. Saris
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF
DENNIS WALKER
April 5th, 2007

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 IN RE: PHARMACEUTICAL)
4 INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
5 PRICE LITIGATION) Civil Action No.
6) 01-CV-12257-PBS
7)
8 THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
9 ALL CASES)
10 *****
11 NO. D-1-GV-04-001286
12 THE STATE OF TEXAS) IN THE DISTRICT COURT
13)
14 ex rel.)
15 VEN-A-CARE OF THE)
16 FLORIDA KEYS, INC.,)
17 Plaintiffs,)
18 VS.) TRAVIS COUNTY, TEXAS
19)
20 ABBOTT LABORATORIES INC.,)
21 ABBOTT LABORATORIES, and)
22 HOSPIRA, INC.,)
23 Defendant(s).) 201ST JUDICIAL DISTRICT
24 *****
25 IN THE COMMONWEALTH COURT OF PENNSYLVANIA
26
27 COMMONWEALTH OF PENNSYLVANIA)
28 by Thomas W. Corbett, Jr.)
29 in his capacity as Attorney)
30 General of the Commonwealth)
31 of Pennsylvania,) Dkt. No. 212 MD 2004
32 Plaintiff,)
33 VS.)
34)
35 TAP PHARMACEUTICAL PRODUCTS,)
36 INC., et al.,)
37 Defendants.)
38

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1 ORAL AND VIDEOTAPED DEPOSITION OF DENNIS WALKER,
2 produced as a witness at the instance of the
3 Plaintiffs, and duly sworn, was taken in the
4 above-styled and numbered causes on the 5th of April,
5 2007, from 8:34 a.m. to 6:10 p.m., before CYNTHIA
6 VOHLKEN, CSR in and for the State of Texas, reported
7 by machine shorthand, at the offices of Stetler &
8 Duffy, Ltd., 11 S. LaSalle Street, Suite 1200,
9 Chicago, Illinois, pursuant to the Texas Rules of
10 Civil Procedure and the provisions attached
11 previously.
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1 FOR THE WITNESS:
2 MR. DAVID J. STETLER
3 Stetler & Duffy, Ltd.
4 11 South LaSalle Street, Suite 1200
5 Chicago, Illinois 60603
6
7 ALSO PRESENT:
8
9 John Maloy Lockwood, M.D.
10 Ven-A-Care of the Florida Keys
11 Mr. Bruce Witty, Videographer
12
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2 (Pages 2 to 5)

FREDERICKS-CARROLL REPORTING

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1 customer with the information they needed.
 2 Q. All right. So if a customer asked you, "I
 3 want to figure out what the spread is, so give me the
 4 average wholesale price and the contract price so I
 5 can figure out what the spread is," you would just
 6 give the customer the information?

7 MS. TABACCHI: Object to the form.

8 A. No.

9 Q. (BY MR. BREEN) Okay. Because that would
 10 violate what Mr. Ward had instructed you?

11 MS. TABACCHI: Object --

12 A. Yes.

13 Q. (BY MR. BREEN) Okay. So this follow-up
 14 conversation you had with Mr. Ward, what additional
 15 information did he provide to you that he had not
 16 provided following your memo of August 7th, 1996?

17 A. Well, that -- things that elevate it to the
 18 point where there were -- there was an actual request
 19 for document production and was related to this issue
 20 of spread between AWP and contract price.

21 Q. Now, when he said there was a request for
 22 documents, did he -- did you have any idea what he
 23 meant by a request for documents? Request by who, for
 24 example? Did you have any idea?

25 MS. TABACCHI: Object to the form.

1 A. Yeah. The request was from corporate.

2 Q. (BY MR. BREEN) From corporate.

3 A. Yes.

4 Q. Okay. And you had -- you had no idea --
 5 strike that.

6 Did you have any idea from your
 7 conversation with Mr. Ward at that time that the
 8 request originated from some entity or authority
 9 outside of Abbott?

10 A. No.

11 Q. All right. So what did he explain to you
 12 other than corporate wants -- wants documents?

13 A. I think I -- he said that corporate wanted
 14 documents that had anything that related to the issue
 15 of AWP -- spread between AWP and contract price.

16 Q. And did he tell you why?

17 A. That it was -- it was a hot or -- or -- it
 18 was a current topic that there was -- that was being
 19 looked into. Something to that effect. I don't know.

20 Q. And did you -- did you have -- were you at
 21 all curious about what -- what -- what -- what the
 22 issue was or what the problem was?

23 A. No.

24 Q. Okay. Now, let me show you what's going to
 25 be marked as Exhibit 577. Appears to be dated

1 February 14, 1997 on Abbott stationary to Michael
 2 Fabrizi, Division Vice President, Automated Health
 3 Technologies. Do you see that?

4 A. Yes.

5 Q. Appears to be sent by you. Is that your
 6 signature on this document?

7 A. It appears to be, yes.

8 Q. Do you recall entering into an agreement with
 9 Automated Health Technologies?

10 A. Yes.

11 Q. Regarding two new product lines of your
 12 FirstChoice injectable drugs?

13 A. Yes.

14 Q. Do you recall entering an agreement to sell
 15 Acyclovir to -- or through Automated Health
 16 Technologies?

17 A. Yes.

18 Q. Was Automated Health Technologies a group
 19 purchasing organization?

20 A. Yes.

21 MR. BREEN: Okay. Now, let's have this
 22 one marked as the next exhibit.

23 MR. WINTER: 578.

24 Q. (BY MR. BREEN) This is going to be 578. And
 25 can you tell us what Exhibit 578 is? It appears to be

1 dated April 28, 1997.

2 A. It's just a contract. As it says, revision
 3 or -- or contract notice.

4 Q. Okay. Are they lowering your prices on
 5 Acyclovir to Automated Health Technologies' members?

6 A. Yes, that appears to be the case.

7 Q. Okay. Now --

8 MR. WINTER: 579.

9 Q. (BY MR. BREEN) Let me show you what's been
 10 marked as Exhibit 579. It appears to be a facsimile
 11 cover -- two-page document dated -- Bates labeled
 12 TXABT 15585 and 15586. It appears to be a two-page
 13 fax that purports to be from you to Michael Fabrizi.

14 Do you see that?

15 A. Yes.

16 Q. Now, do you recall -- do you recall ever
 17 seeing this document before?

18 A. Yes. I created it, so, yes, I would have
 19 seen it before.

20 Q. And you see under comments there, "F.Y.I.,
 21 Zack from Venacare Pharmacy (305) 292-1635 requested
 22 this information. Please call if you have any
 23 questions." Do you see that?

24 A. Yes.

25 Q. Why would you be telling Mr. Fabrizi that

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1 Zack from Ven-A-Care Pharmacy requested information?
 2 A. Because Ven-A-Care was -- my understanding,
 3 anyway, was a member of Automated Health Technologies.
 4 Q. Okay. Do you recall having a conversation
 5 with Zack from Ven-A-Care Pharmacy?
 6 A. Yes. Well, I don't recall the conversation,
 7 but I'm referencing here that he did call and request
 8 this information.
 9 Q. Okay. Now -- and then if you go to the next
 10 page, a copy of the fax that -- a copy of the document
 11 that you faxed to Mr. Fabrizi and appears to be
 12 another facsimile cover sheet. Do you see that?
 13 A. Yes.
 14 Q. This one is to Zack, Ven-A-Care Pharmacy,
 15 from Dennis Walker. Do you see that?
 16 A. Yes.
 17 Q. Dated 5/30/1997. And if you go down a little
 18 bit further it says, "Comments: Listed below is your
 19 Automated Health Technologies price for Acyclovir and
 20 the A.W.P. information you requested. Please call if
 21 you have any questions." Do you see that?
 22 A. Yes.
 23 Q. And so did you communicate to Mr. Bentley
 24 that his price for Acyclovir 500 milligrams was \$30
 25 and the AWP was \$95?

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1 MS. TABACCHI: Object to the form.
 2 A. I don't know Mr. Bentley.
 3 Q. (BY MR. BREEN) Did you communicate to Zack
 4 at Ven-A-Care Pharmacy on or about May 30th, 1997 that
 5 Ven-A-Care's price for Acyclovir 500 milligrams was
 6 \$30 when the AWP was \$95?
 7 A. Yes. I sent him the information he
 8 requested.
 9 Q. Okay. Did you communicate on that same fax
 10 that the price for Acyclovir one gram was \$60 and the
 11 AWP was \$190?
 12 A. Yes. That's additional information he
 13 requested.
 14 Q. What is the spread on the 500 milligram?
 15 MS. TABACCHI: Object to the form.
 16 A. What is the spread on the 500 milligram?
 17 Q. (BY MR. BREEN) Yes. Of Acyclovir on the
 18 document in front of you.
 19 MS. TABACCHI: Object to the form.
 20 A. You're asking me what is the difference
 21 between the contract price and the AWP price?
 22 Q. (BY MR. BREEN) Was that your understanding
 23 of what the AWP spread was in May of 1997, the
 24 difference between AWP and the contract price?
 25 A. That's my understanding.

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1 Q. Okay. So based upon your understanding, what
 2 was the spread on the Acyclovir 500 milligram based on
 3 the information you communicated to Zack at Ven-A-Care
 4 Pharmacy on May -- on or about May 30, 1997?
 5 MS. TABACCHI: Object to the form.
 6 A. Well, the difference between the numbers here
 7 would be \$65.
 8 Q. (BY MR. BREEN) Okay. And what was the
 9 spread on the Acyclovir one gram?
 10 MS. TABACCHI: Object to the form.
 11 A. The difference between the numbers here would
 12 be \$130.
 13 Q. (BY MR. BREEN) Okay. Now, would you agree
 14 that the price reduction on Acyclovir provided to
 15 Automated Health Technologies' customers that appears
 16 in Exhibits -- that appears in Exhibit 578, would you
 17 agree that price reduction widened the spread for
 18 Automated Health Technologies' members?
 19 MS. TABACCHI: Object to the form.
 20 Q. (BY MR. BREEN) Correction. Automated
 21 Healthcare Technologies' members?
 22 MS. TABACCHI: Still object to the form.
 23 A. The price reduction does -- does improve the
 24 math.
 25 Q. (BY MR. BREEN) Right.

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1 A. Yes.
 2 Q. Makes the spread bigger.
 3 MS. TABACCHI: Object to the form.
 4 A. The mathematical difference is -- is greater
 5 with this price reduction.
 6 Q. (BY MR. BREEN) Okay. So do you recall
 7 telling Mr. Bentley in a telephone conversation on May
 8 30, 1997 that --
 9 MR. STETLER: Counsel, not to quibble,
 10 but I think he said he doesn't know Bentley. So maybe
 11 if you say Zack.
 12 Q. (BY MR. BREEN) I'm sorry. Do you recall
 13 telling Zack --
 14 MR. STETLER: We're assuming.
 15 Q. (BY MR. BREEN) -- at Ven-A-Care?
 16 MR. BREEN: Thank you, Counsel.
 17 MR. STETLER: That's all right.
 18 MR. BREEN: That was --
 19 MR. STETLER: I just didn't want to
 20 start over again.
 21 MR. BREEN: I know.
 22 Q. (BY MR. BREEN) Do you recall -- let me
 23 rewind.
 24 Do you recall telling Zack at Ven-A-Care
 25 on May 30, 1997 in a telephone conversation that

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1 Abbott's price reduction for Acyclovir was, quote,
 2 widening the spread for providers?
 3 A. No.
 4 Q. You don't recall that or -- or -- I mean, do
 5 you even recall having a conversation with Zack from
 6 Ven-A-Care on May 30, 1997?
 7 MS. TABACCHI: Object to the form.
 8 A. Well, this fax refreshed my memory to the
 9 fact that I did have a conversation with him, but
 10 under -- I do not recall saying anything with regard
 11 to widening the spread on any products --
 12 Q. (BY MR. BREEN) Okay.
 13 A. -- in that conversation or any subsequent
 14 conversations.
 15 Q. What do you recall about the conversation
 16 with Mr. Bentley on May 30, 1997?
 17 MS. TABACCHI: Object to the form.
 18 A. From what this -- this fax tells me, he
 19 requested the information, list number, the product,
 20 the each price and the AWP each, and I provided him
 21 with that information.
 22 Q. (BY MR. BREEN) Okay. Let me ask -- let me
 23 ask the question this way. And I understand you've
 24 got the document in front of you, which is -- I can't
 25 remember exhibit numbers. What exhibit is that?

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1 A. 579.
 2 Q. 579. Okay. But my -- and I will represent
 3 to you that document was provided by Abbott,
 4 apparently from Abbott's business records, to us in
 5 this -- in this litigation. And do you have a present
 6 recollection of ever seeing Exhibit 579 before today?
 7 In other words, sitting here today, do you have a
 8 recollection of having seen that document before?
 9 MS. TABACCHI: Object to the form.
 10 A. I can vaguely recall around this time
 11 sending -- sending a fax to Mr. Fabrizi and to this
 12 person called Zack.
 13 Q. (BY MR. BREEN) Okay. Do you have a present
 14 recollection of ever having produced Exhibit 579, that
 15 document, that two-page document, in response to
 16 Mr. Ward's request that you assemble information at
 17 some time after August of 1996?
 18 A. No.
 19 Q. Okay. So before today when was the last time
 20 you saw Exhibit 579?
 21 A. Whenever I sent this fax.
 22 Q. Okay.
 23 A. Or whenever I produced this document.
 24 Q. When you produced this document.
 25 A. Assuming that I did produce it, yes.

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1 Q. Do you have a recollection of ever having
 2 produced it?
 3 MS. TABACCHI: Object to the form.
 4 A. You said it -- it came from Abbott and that's
 5 by the Bates number, Bates stamp number. My guess
 6 would be that Abbott received it when I tendered all
 7 the documents that were requested.
 8 Q. (BY MR. BREEN) Okay. But you recall
 9 tendering documents only one time when you were a
 10 national account manager, correct?
 11 A. Yes.
 12 Q. And then would that mean that if you had been
 13 the one that tendered Exhibit 579 when Abbott
 14 requested documents, would that mean that Mr. Ward
 15 asked for those documents from you at some point after
 16 May 30, 1997?
 17 MS. TABACCHI: Object to the form.
 18 A. If I were the one that tendered this, yes.
 19 Q. (BY MR. BREEN) Okay. Because that -- would
 20 Exhibit 579 be the kind of document you would have
 21 taken with you to your new job?
 22 A. No.
 23 Q. Okay. So if you tendered it, that would mean
 24 that you were never asked for documents until sometime
 25 after May 30, 1997, correct?

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1 MS. TABACCHI: Object to the form.
 2 A. That would be an implication, yes.
 3 Q. (BY MR. BREEN) Well, I want to make sure
 4 about this because you testified earlier that you were
 5 asked for documents one time when you were a national
 6 account manager. Do you recall that?
 7 A. Yes.
 8 Q. Okay. And you know that that was at some
 9 point in time after August 6th of 1996, correct?
 10 A. Yes.
 11 Q. All right. Because that was the date that
 12 Mister -- of your memo where Mr. Ward said, "Don't
 13 discuss this anymore," right?
 14 A. Yes.
 15 Q. Okay. You -- but sitting here today, you
 16 can't recall how long -- how much time after August of
 17 1996 you were asked to produce documents, do you?
 18 A. I believe I said it was in late '96 or '97.
 19 Q. Okay.
 20 A. Yeah.
 21 Q. But you have -- sitting here today, you have
 22 no way of knowing if it was before or after May 30,
 23 1997, do you?
 24 A. No.
 25 Q. Are there any records you could look at or

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